correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–06–53 Boeing: Amendment 39–9199. Docket 95–NM–37–AD.

Applicability: All Model 737 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent the rudder actuator piston and the rudder from operating with reduced force capability or moving in a direction opposite the intended direction, and resultant reduced controllability of the airplane, accomplish the following:

(a) Within 5 flights after the effective date of this AD, identify the part number and serial number of the main rudder power control unit (PCU).

(b) If the PCU is identified with a part number and serial number specified in the list below, prior to further flight, remove the PCU from the airplane, and replace it with a serviceable part.

Part No.	Serial No.(s)
65C37052–3 ...	17SS, 49, 90A, 101, 138, 149A, 191A, 308A, 374, EGG0282.
65C37052–5 ...	1211A.
65C37052–7 ...	399A, 710A, 926A, 935A, 1175A, 1237A, 1493A, 1504A, 1546, 1561A, 67700.
65C37052–8 ...	1090A, 1223, 1920, 2023A.
65C37052–9 ...	0184, 247, 394A, 641A, 1739A, 1746A, 1796A, 1849A, 1997A, 2181A.

(c) As of the effective date of this AD, no person shall install on any airplane a rudder PCU having a part number and serial number that is specified in the list contained in paragraph (b) of this AD unless paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD are accomplished.

(1) Perform a functional test of the PCU in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 737–27–1185, dated April 15, 1993. And

(2) Check the torque value on the spring retainer, Part Number 68021–5, to determine that it measures a minimum of 25 inch-pounds. If the torque value is less than 25 inch-pounds, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. And

(3) Repeat the functional test required by paragraph (c)(1) of this AD. The PCU must pass this functional test in order to be returned to service. And

(4) The measurement required by paragraph (c)(2) of this AD must be reported to the FAA, Transport Airplane Directorate, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (206) 227–1181. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The functional test shall be done in accordance with Boeing Service Bulletin 737–27–1185, dated April 15, 1993. The incorporation by reference of this document was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of March 3, 1994 (59 FR 4570, February 1, 1994). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on May 1, 1995, to all persons except those persons to whom it was made immediately effective by telegraphic AD T95–06–53, issued on March 14, 1995, which contained the requirements of this amendment.

Issued in Renton, Washington, on April 5, 1995.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–8828 Filed 4–13–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 101, 111, 123, 128, 141, 143, 145, 148, 159, and 178

[T.D. 95–31]

RIN 1515–AB53

Express Consignments; Formal and Informal Entries of Merchandise; Administrative Exemptions

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adopting final rules that implement two Customs Modernization provisions of the North American Free Trade Agreement Implementation Act that seek to streamline the commercial operations of the U.S. Customs Service. One provision concerns raising administrative exemptions from duty, taxes, and fees on articles such as gifts and personal and household goods; the other concerns exemptions from entry

requirements for specified merchandise (undeliverable shipments, rail equipment, and instruments of international traffic). Further, the final rules also clarify the entry procedures for shipments by express consignment operators or carriers to make it clear that all such shipments must be entered, unless they are specifically exempted from entry requirements.

This document addresses public comments solicited by the interim regulations that were published in the Federal Register on June 13, 1994, and makes certain suggested changes to those interim regulations to add clarity and improve the readability of the final regulations.

EFFECTIVE DATE: May 15, 1995.

FOR FURTHER INFORMATION CONTACT: *For Operational Aspects:* Mike Compeau, Office of Field Operations, (202) 927–0762; *For Legal Aspects:* William G. Rosoff, Office of Regulations and Rulings, (202–482–7040).

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, the United States enacted the North American Free Trade Agreement Implementation Act (the Act), Pub. L. 103–182, 107 Stat. 2057. Title VI of the Act (107 Stat. 2170) contains some 60 provisions pertaining to Customs Modernization that seek to streamline and automate the commercial operations of the U.S. Customs Service. Two of these streamlining provisions are section 651 of Subtitle C and section 681 of Subtitle D. Section 651 amends section 321 of the Tariff Act of 1930, as amended (19 U.S.C. 1321), which pertains to the administrative exemption of certain articles from duty and taxes to avoid disproportionate expense and inconvenience to the Government; section 681 of Subtitle D amends the Harmonized Tariff Schedule of the United States (HTSUS), at General Note 4 (now General Note 13) and at various chapter Notes, to exempt certain other articles from unnecessary ''re-entry'' procedures as imports.

Administrative Exemptions and Section 651 of the Act

Prior to passage of the Act, section 321 authorized administrative exemptions from duty and taxes only up to specific minimal dollar limits on articles, such as gifts and personal and household goods, and in certain other situations. Although the statutorily-specified dollar amounts were adjusted periodically, as recently as 1983, they have not kept pace with inflation; the current amounts are not sufficiently high to permit the Secretary to meet the statutory goal of limiting expense to the Government disproportionate to the revenue that is collected.

Because of this continuing inflation problem and due to substantial increases in passenger arrivals and low-value entries, section 321 was amended by section 651 of the Act to increase the dollar amounts that trigger eligibility for administrative exemptions. But instead of setting maximum dollar amounts below which the Secretary was authorized to make the exemptions applicable, the amendments set minimum dollar amounts and authorize the Secretary to make the exemptions applicable up to an amount specified by regulation. Also, the exemptions were made applicable to the total of duties and taxes.

The provisions of section 651 also added a new provision to section 321 to allow Customs to waive collection of duties, fees, and taxes on entered merchandise where the duty amount is less than $20; however, no amendment to the regulations is promulgated at this time.

The regulations pertaining to administrative exemptions and entry procedures applicable to merchandise subject to section 321 are scattered throughout the Customs Regulations (19 CFR Chapter I): The provision containing the authorization to disregard a difference of less than $10 between the duty actually due on an entry and the estimated duties deposited is found at § 159.6 (19 CFR 159.6); provisions pertaining to *bona fide* gifts are found at §§ 10.152 and 145.32 (19 CFR 10.152 and 145.32); provisions pertaining to personal or household articles are found at §§ 148.51, 148.12 and 148.64 (19 CFR 148.51, 148.12 and 148.64); provisions pertaining to the $5 administrative exemption for all other articles are found at §§ 10.151 and 145.31 (19 CFR 10.151 and 145.31); and conditions for the exemptions provided for at §§ 10.151 and 10.152 are now found at § 10.153 (19 CFR 10.153). Also, § 128.24(d) (19 CFR 128.24(d)) refers to low-value shipments (*i.e.*, shipments valued at $5 or less) and provides that such shipments must be segregated from shipments valued at more than $5 when the special informal entry procedures provided for in part 128 are used. (This provision was intended to cover articles which could be administratively exempted from duties and taxes under section 321(a)(2)(C) (19 U.S.C. 1321(a)(2)(C)) (see T.D. 89–53, published in the Federal Register on May 8, 1989 (54 FR 19561)).) Other provisions relating to administrative exemptions and entry requirements are found in parts 111 (Customs brokers), 141 (Entry of merchandise), and 143 (Special entry procedures) of the Customs Regulations (19 CFR).

The Harmonized Tariff Schedule and Section 681 of the Act

Under present regulations, shipments which leave the U.S. and go undelivered to the country of destination (without having left the custody of the carrier or foreign customs service) are considered exports and must be ''re-entered'' into the U.S. as imports. Current regulations also provide that rail equipment brought into the U.S. from Canada, although not subject to duty, is subject to entry requirements, and instruments of international traffic (*e.g.*, containers, rail cars and locomotives, truck cabs, and trailers), although exempt from formal entry procedures, are subject to certain other procedures.

Section 681 of the Act amended the Harmonized Tariff Schedule of the United States (HTSUS) at General Note 4 (now General Note 13, *see*, Presidential Proclamation 6641, December 15, 1993, published in the Federal Register on December 20, 1993 (58 FR 67032, 66867)) to exempt from entry requirements certain shipments returned as undelivered, thereby facilitating their processing. Section 681 also amended various HTSUS chapter Notes to eliminate entry requirements for rail cars and locomotives on which no duty is owed, pursuant to terms of the U.S.-Canada Free-Trade Agreement (*see*, U.S.-Canada Free-Trade Implementation Act of 1988, Pub. L. 100–449, 102 Stat. 1851, 19 U.S.C. 2112 note), and to eliminate unnecessary entry procedures related to instruments of international traffic by providing for reporting requirements and the periodic payment of fees.

The interim regulations implementing aspects of these various provisions are found in parts 10, 123, and 141 of the Customs Regulations (19 CFR parts 10, 123, and 141).

Customs Regulations Amended by Interim Regulations

To implement the amendments to section 321 of the Tariff Act of 1930 and provisions of the HTSUS by sections 651 and 681, respectively, of the Act, and to clarify the procedures for shipments brought into the U.S. by express consignment operators and carriers, on June 13, 1994, Customs published interim regulations in the Federal Register as T.D. 94–51 (59 FR 30289). These interim regulations provided for a 30-day comment period and an effective date of 45 days after

publication, unless comments received demonstrated that there was good cause for not making the regulations effective on an interim basis. No comments received by Customs established such good cause. The published effective date of the interim regulations—July 28, 1994—subsequently became the subject of litigation, when, on July 25, 1994, the National Customs Brokers and Forwarders Association of America, Inc., filed a motion with the United States Court of International Trade (CIT) seeking to enjoin the implementation of the interim regulations, and were granted a temporary restraining order (TRO). Accordingly, on July 28, 1994, Customs published another document in the Federal Register as T.D. 94–61 (59 FR 38548) giving notice that the TRO had been issued and that the effective date of the regulations was delayed. A hearing was held on August 9, 1994, and on August 16, 1994, the Court issued a decision in *National Customs Brokers & Forwarders Ass'n of America, Inc.* v. *U.S.*, 18 CIT _____, 861 F.Supp. 121 (CIT 1994), which denied the plaintiff's motion for a preliminary injunction, revoked the temporary restraining order, and dismissed the case. The interim rules subsequently became effective on August 23, 1994, when T.D. 94–71 (59 FR 43283) was published in the Federal Register.

The interim regulations amended or revised twenty-one sections of the Customs Regulations that are scattered over ten parts of the Code of Federal Regulations (19 CFR) to conform them to the statutory changes made by the above-mentioned amendments, and solicited comments concerning these changes. The sections affected by the interim rule were §§ 10.151, 10.152, 10.153, 101.1, 111.3, 123.12, 128.21, 128.23, 128.24, 128.25, 128.26, 141.4, 143.21, 143.23, 143.26, 145.31, 145.32, 148.12, 148.51, 148.64, and 159.6 (19 CFR 10.151, 10.152, 10.153, 101.1, 111.3, 123.12, 128.21, 128.23, 128.24, 128.25, 128.26, 141.4, 143.21, 143.23, 143.26, 145.31, 145.32, 148.12, 148.51, 148.64, and 159.6).

Eighteen comments were received, which raised five areas of concern. The comments received and Customs responses to them are set forth below.

Discussion of Comments

Comments were received from Customs broker organizations (six), express consignment companies or organizations (five), groups representing other types of carriers (three), a Port Authority (one), a group representing the recording industry (one), the Joint Industry Group (one), and a Customs office (one). The comments raised five areas of concern involving: (1) Whether the interim regulations codified existing practices; (2) exempt merchandise under §§ 10.151 and 10.152; (3) unlicensed transactions under § 111.3; (4) procedures for express consignments under §§ 128.21, 128.23, and 128.24; and (5) entry requirements under §§ 141.4, 143.23, 143.26, and 145.31 and those pertaining to undeliverable shipments and international traffic. We address each of these concerns *seriatim*.

In General

Comment: Five commenters stated that the interim regulations should not be implemented or that there should be a longer comment period before implementation. Six commenters called for the immediate implementation of the interim regulations.

Customs Response: The issue of implementing interim regulations was addressed by the Court of International Trade (CIT) in *National Customs Brokers & Forwarders Ass'n of America, Inc.*, v. *U.S., 18 CIT* _____, 861 F.Supp. 121 (CIT 1994) (*National Customs Brokers*), wherein, the court found that Customs acted lawfully in promulgating interim regulations which affect certain administrative exemptions. Further, Customs feels that adequate time for commenting and analysis of those comments has been provided.

Comment: Two commenters stated that Customs had not considered the revenue effects of implementing the new administrative exemption levels.

Customs Response: Given that the Customs Modernization provisions of the Act declare the will and the objectives of Congress and the President to modernize Customs laws, Customs is not required to make such a consideration because, by its act of amending section 321, Congress indicated its policy determination with respect to cost-to-benefit analysis of expense and inconvenience versus revenue raised with regard to the entry of exempt low-value shipments. See, the legislative history of section 651, H.R. Rep. No. 361, 103rd Cong., 1st Sess., pt. 1, 145 (1993) and S. Rep. No. 189, 103rd Cong., 1st Sess. 93 (1993), and the discussion of this issue by the court in its decision in *National Customs Brokers*, cited above.

Comment: One commenter expressed concern that the interim regulations appear to associate the privileges in 19 U.S.C. 1321 only with express consignment processing. The commenter stated that since a carrier is not listed among the parties authorized to make entry of shipments valued at § 200 or less, a carrier may not be authorized to make entry, even though the carrier holds the air waybill document/data. The commenter ''strongly recommends'' that the interim regulations be amended to clarify that for these entries the carrier may present the air waybill or bill of lading on behalf of the owner or consignee.

Customs Response: The commenter's concern is ill-founded. A carrier *is* a nominal consignee and, therefore, is entitled to the privileges provided under the interim regulations for shipments valued § 200 or less. Regarding the initial concern that the interim regulations associate the privileges in section 1321 only with express consignment processing, this is exactly what the interim regulations do *not* do; they apply the same rules across the board, as much as is possible, so that now the privileges under the amended statute are extended generally and a ''level playing field'' results (i.e., see the amendments to §§ 143.21, 143.23, and 143.26, as well as those to parts 145 and 148). Accordingly, no change to the amendments is made based on this comment.

Comment: A commenter suggested the total elimination of part 128, because such regulations are superfluous and duplicative of existing provisions. The commenter stated that part 128 covers ''express consignments'' but does not define the term. Therefore, the commenter suggested that either part 128 be eliminated totally or it be amended to cover all consignments and all carriers. If it is decided to retain part 128, the commenter suggested that §§ 143.26 and 145.31, as well as other ''interim'' regulations ''designed to accommodate the 'express' industry'' be redesignated in part 128.

Customs Response: Initially, we note that it would be inconsistent with Pub. L. 103–182, which took special notice of the express consignment industry (see section 681 and H.R. Rep. No. 361, 103rd Cong., 1st Sess. pt. 1, 154–155 (1993)), for Custom to now eliminate that part of the Custom Regulations pertaining to that industry. As for the contention that Part 128 does not define ''express consignments'', the definition of ''express consignment operator or carrier'' in § 128.1(a) contains the following elements: That such businesses offer their special express service to the public under an advertised, reliable timely delivery on a door-to-door basis; and, that they operate in any mode or intermodally by moving cargo under closely integrated administrative control. Regarding the propriety of having a separate part 128 to regulate just the express industry, Customs has a long history of facilitating trade by addressing the

specific needs of groups or industries which have transactions with Customs. That is why other identifiable groups, such as vessel carriers (part 4), air carriers (part 122), land carriers (part 123), warehouses (parts 19 and 144), and foreign trade zones (part 146) have regulations applicable to their businesses located in easily identifiable parts of the Customs Regulations. Accordingly, no change to the amendments is made based on this comment.

Comment: A commenter cited Customs information-gathering and automation efforts and then argued that in the Interim Regulations Customs is informing the public that, for a ''majority of importations, those entered on informal Customs entries,'' Customs does not need the information which it had said it needed when it implemented these automation efforts.

Customs Response: The only change from the manifest requirements for express consignment shipments under part 128 is that the HTSUS (Harmonized Tariff Schedule of the United States) number is not required for shipments valued at § 200 or less (i.e., *not* for all informal entries). Customs believes that this change does not affect a ''majority of importations.'' Accordingly, no change to the amendments is made based on this comment.

Comment: A commenter stated that Customs should perform periodic inspections of all goods, including shipments valued at § 200 or less.

Customs Response: Customs fully agrees with this comment and, in fact, does perform examinations of shipments valued at less than § 200. These examinations are typically performed under structured programs such as statistically valid compliance measurements, random examinations, and targeted examinations.

Comment: One commenter stated that the regulations would allow unfettered entry according to unchallenged declarations of entry. Another commenter questioned how the FDA will enforce its statutes and regulations if Customs has no idea whether a package falls within FDA jurisdiction. This same commenter also questioned how Customs will enforce visa requirements for apparel and intellectual property rights, arguing that the Interim Regulations make no mention of how this will be done.

Customs Response: Customs disagrees with this statement. One of the concepts that permeates the Customs Modernization provisions is that an ''importer of record'' is held to a standard of ''reasonable care'' in discharging entry and related activities. This standard, coupled with the fact that Customs has every authority to challenge the contents of any documentation or data submitted, including value, presented for shipments entering the United States, enables Customs to rely on the specific description provided to determine whether a shipment is subject to another agency's requirements. However, because the ''reasonable care'' standard was not made express in the interim regulations, specifically at § 143.26, language providing for this standard is added, under the authority of 19 U.S.C. 1498(b).

In addition, it is Customs opinion that visa requirements will be enforced because merchandise for which there are visa requirements is encompassed by the provisions of § 10.153(g) (merchandise of a class or kind provided for in any absolute or tariff-rate quota), or, in the case of express shipments, by the provisions of § 128.24(a) (merchandise which is subject to quota or other quantitative restraints). Therefore, merchandise subject to visa does not qualify for duty-free treatment under the provisions of § 10.151. Accordingly, no change to the amendments is made based on this comment.

Comment: A commenter stated that Customs would virtually eliminate any possibility for detection of contraband shipments through subsequent review of importation documents.

Customs Response: Customs disagrees with this statement. Customs routinely performs port audits of manifest information, including low-value shipments. In addition, Customs can examine these shipments prior to release. (See also the response below to a similar comment under the heading ''Express consignment procedures under §§ 128.21, 128.23, and 128.24''.)

Exempt Merchandise Under §§ 10.151 and 10.152

Comment: One commenter contended that the preparation of an entry should not be required for any shipment valued at $200 or less. Two other commenters contended that shipments under 19 U.S.C. 1321 are exempt from entry as well as duty. These commenters also referred to what they believe to be favorable treatment for mail shipments.

Customs Response: Customs does not agree with these comments. These issues were clearly addressed in the **BACKGROUND** portion of T.D. 94–51 (the Federal Register document which amended the Customs Regulations on an interim basis (59 FR 30289)) (see also *National Customs Brokers,* which upholds Custom position in this regard). It is Customs position that the former § 10.151 did *not* exempt merchandise covered by it from entry; it exempted such merchandise from formal entry under 19 U.S.C. 1484. T.D. 94–51 clearly explains this. Regarding mail entries, § 145.31 provides that the *district director* does not need to prepare an entry as provided for in § 145.12. This is not a change from the previous provision, except that a reference to § 145.12 was added to make it clear that what is meant is that *Customs officers* need not prepare an entry for the covered shipment. Accordingly, no change to the amendments is warranted.

Comment: One commenter questioned Customs ability to determine if an importer has multiple shipments of low-value merchandise arriving on one day because an importer can use various couriers, carriers and the mail.

Customs Response: Customs disagrees that it would be unable to determine if an importer has multiple shipments. Customs performs post audits of manifests for both couriers and other carriers and it would be possible to identify violators through these procedures or simply through manifest reviews. Importers using the mail have no control over postal routing and a pattern of repeated shipments of low-value merchandise would be detected by Customs personnel responsible for processing the packages.

Comment: One commenter proposed that an invoice be attached to each manifest to verify the low value of shipments.

Customs Response: Customs disagrees with this proposal. Although Customs has the authority to require supporting documentation for any shipment, we feel that it would place an excessive burden on the trade community to require such documentation which, in the preponderance of cases, would simply duplicate information already provided. Accordingly, no change to the amendments is made based on this comment.

Comment: One commenter proposed that Customs maintain the *status quo* for shipments with a declared value of $100 or more.

Customs Response: Customs feels that this is not an option. Customs also notes that the amount set by 19 U.S.C. 1321(a)(2)(C) is a ''floor'' amount of $200.

Comment: One commenter suggested that the $100 ceiling for gifts in § 10.152 be changed to $200, consistent with the $200 ceiling for importations by one person on one day in § 10.151.

Customs Response: The dollar amounts currently provided in

§§ 10.151 and 10.152 are the ''floor'' amounts established by Congress when it amended 19 U.S.C. 1321. Although the Secretary of the Treasury is authorized to prescribe exceptions to any exemption provided for under section 321, changing a provision to provide for amounts greater than the floor amounts established requires an analysis of the expense and inconvenience to the Government compared to the revenue that would otherwise be collected. See, 19 U.S.C. 1321(b). When such an analysis is undertaken, this comment will be reconsidered. At this time, however, no change to § 10.152 can be made.

Unlicensed Transactions Under § 111.3

Comment: A commenter stated that although it does not challenge the decision as to the *type* of entry method which may be used for shipments under 19 U.S.C. 1321, it does challenge Customs taking of the authority to decide *who* will make such entries by the addition of § 111.3(e) to the Customs Regulations. The commenter also cited 19 U.S.C. 1641(b)(6) under which any person who intentionally transacts Customs business, other than on behalf of that person (*i.e.*, a person conducting Customs business for his or her own behalf), is liable to a $10,000 penalty. The commenter noted that, notwithstanding the above provisions, the Interim Regulations provide that shipments of $200 or less may be made by the owner, purchaser, *or consignee* of the shipment. The commenter argued that a consignee filing such an entry is clearly conducting Customs business other than on its own behalf and concluded that in this case the entry documents must be filed by the persons with the right to make entry under 19 U.S.C. 1484. Three other commenters challenged the provisions of § 143.26 which allow a consignee to make entry on shipments valued at $200 or less.

Regarding the amendment to § 111.3(e), another commenter noted that an importer is already allowed to make entry for his/her own account without being a Customs broker, and that Customs has issued instructions and messages showing concern about adequately enforcing cargo selectivity processing and protecting the revenue in regard to informal entries. The commenter further stated that extending the right to file informal entries to parties other than the actual importer or a licensed broker may compound existing problems. Also, the commenter asked what the power of attorney requirements would be for the party presenting an informal entry.

Another commenter noted the amendment to ''Customs business'' in 19 U.S.C. 1641(a)(2) made by Pub. L. 103–182 and noted that this indicates that the intent of Congress in promulgating the Customs Modernization provisions of the Act was to further restrict the amount and type of Customs business that could be performed by unlicensed parties.

Customs Response: In *National Customs Brokers,* the Court addressed these very contentions and concluded that ''* * * sections 1498 and 1484 support the conclusion that Customs has acted lawfully in promulgating regulations for the declaration and entry of exempt merchandise * * *''

Concerning power of attorney requirements, a power of attorney continues to be required in each instance in which a Customs broker is designated by the owner, purchaser, or consignee. The change effected by the Interim Regulations in this regard is that now, for shipments entitled to the privileges in 19 U.S.C. 1321, the consignee may make entry (see § 143.26(b)). Since the consignee in this situation makes such an entry in its own right, no Customs power of attorney (see 19 CFR 141.34 *et seq.*) is required in this situation. Accordingly, no change to the amendments is made based on these comments.

Comment: Arguing that Customs has historically required the person making entry not only to be knowledgeable about and accountable for the facts relating to an importation but also to submit documentation to substantiate that knowledge, a commenter stated that its reading of § 143.26, combined with the changes to Part 128, indicates that ''express'' entities (and their licensed brokers) may enter all shipments each individually valued at not over $1250 by merely submitting an ''entity'' manifest setting forth the freight bill number and a value not over $1250.

Customs Response: Regarding the ''right to make entry'' issues, as stated above, these issues were clearly addressed by the CIT's decision in *National Customs Brokers.* Regarding the treatment of shipments carried by express consignment operators or carriers, the Interim Regulations are very clear in creating a 3-tiered approach (shipments valued at $200 or less and otherwise qualifying may be entered informally, as provided for in 19 U.S.C. 1498 and § 128.24, and are entitled to the privileges in 19 U.S.C. 1321; shipments valued from $200 to $1250 may be entered informally, as provided for in 19 U.S.C. 1498 and § 128.24; and all other shipments must be entered under the formal entry procedures). If the commenter is questioning the use of ''in-house'' brokers by couriers, we note that this issue has been extensively dealt with by the Courts (*National Customs Brokers* v. *U.S.,* 13 CIT 803, 723 F.Supp. 1511 (1989); *National Customs Brokers & Forwarders Ass'n of America* v. U.S., 14 CIT 108, 731 F.Supp. 1076 (1990); *J.F.K. Customs Brokers Ass'n Inc.* v. *U.S.,* 745 F.Supp. 113 (E.D.N.Y. 1990)).

Express Consignment Procedures Under §§ 128.21, 128.23, and 128.24

Comment: One commenter suggested that the manifest requirements in § 128.21 be modified to require a description (of the imported merchandise) detailed enough so that the HTSUS classification applicable to the shipment can be determined from the description.

Another commenter stated that § 128.24(e) permits release of shipments valued at less than $200 without the requirement for an HTSUS number and § 128.24(d) exempts such shipments from the filing of an entry summary.

While two commenters supported not having a HTSUS number requirement, two other commenters stated that HTSUS numbers should be required for section 321 releases.

Those opposed to not requiring HTSUS numbers questioned if Customs would be able to enforce other government agency requirements, visa requirements, or Intellectual Property Rights (IPR) issues.

Customs Response: The requirement for a specific description of entered merchandise, as provided in the Interim Regulations, was contained in the previous provision (19 CFR 128.21(a)(4)). The only change from the previous provision is that, consistent with the amendment to 19 U.S.C. 1321(a)(2)(C), no entry summary or estimated duties are required and tariff classification information is not required for shipments qualifying for 19 U.S.C. 1321 treatment. In addition, Customs, under 19 CFR 143.22, has the option of requiring a formal entry for any shipment for which there are questions regarding admissibility, enforcement or revenue.

Regarding a requirement for HTSUS numbers on low-value entries, Customs does not feel that there is sufficient reason to require such merchandise identification when other required manifest information is adequate to enforce these provisions. Customs believes that the requirements to provide shipper/consignee information and a specific description, along with the country of origin and value of the merchandise, provide adequate

information to meet Customs enforcement responsibilities on low-value shipments. Accordingly, no change to the amendments is made based on this comment.

Comment: A commenter suggested that the requirement in § 128.21(a)(4)(i) for the HTSUS number on the manifest if the merchandise is required to be formally entered is redundant since the HTSUS number is provided via the CF 3461 or CF 7501 and the transmission of that data via the Automated Broker Interface (ABI).

Customs Response: The requirement has been in effect since express regulations were originally published. As this item is not directly related to the amendments made by sections 651 and 681 and was not included in the interim regulations, Customs does not support including the proposal in the final rule because there has not been a comprehensive analysis performed at this time. Accordingly, no change to the amendments is made based on this comment.

Comment: One commenter stated that ''express'' entities may enter shipments valued at less than $1,250 by merely submitting a manifest setting forth the freight bill number and the value.

Customs Response: We are unaware of any regulations which state this. Requirements for entry of express shipments valued between $200 and $1,250 are set forth in § 128.24; however, the information required goes far beyond a bill number and value. The requirements for release of shipments valued under $200 are defined in § 143.23 and also require more than a bill number and value information.

Comment: One commenter stated that it appears that shipments of any value may be entered via a manifest report.

Customs Response: The commenter did not cite any regulation or other basis for this comment. We are unaware of any regulation which would permit this.

Comment: A commenter requested removal or authorization of a waiver of the requirement in § 128.23 that entry numbers be furnished in a Customs-approved bar code format. Another commenter argued that transmission in a bar-coded format is ''operationally impossible.''

Customs Response: The requirement has been in effect since express consignment regulations were originally published. As this item was not directly related to the amendments made by sections 651 and 681 and was not included in the interim regulations, Customs does not support including the proposal in the final rule because there has not been a comprehensive analysis performed at this time. Accordingly, no change to the amendments is made based on this comment.

Comment: Four commenters suggested that § 128.23(b)(1) should require express consignment entities utilizing the procedures in part 128 to comply with the *applicable* Automated Commercial System (ACS) requirements.

Customs Response: Customs disagrees with this proposal, and believes that such a change to the regulations would actually serve to confuse the applicability of ACS requirements. Insertion of the word ''applicable'' would create confusion by inferring that the use of automated procedures is discretionary. Accordingly, no change to the amendments is made based on this comment.

Comment: One commenter asked that § 128.24(e) be clarified so that it is clear that the requirement for segregation of shipments valued at $200 or less from those valued at more than $200 when an advance manifest is used refers to segregation on the manifest.

Customs Response: We agree with this proposal. There was never any intent that actual shipments of low-value merchandise be physically segregated from other shipments. We feel this can be resolved by rewording the pertinent sentence to read ''such shipments must be segregated *on the manifest* from * * *.''

Entry Requirements Under §§ 141.4, 143.23, 143.26, and 145.31 and Those Pertaining to Undeliverable Shipments and International Traffic

Comment: A commenter stated that § 141.4(c) provides for exemption from entry for undeliverable articles under HTSUS General Note 13(e), subject to certain conditions. One of these conditions requires that the person claiming the exemption must submit a certification that the merchandise was intended to be exported to a foreign country. However, T.D. 55091(4), 95 Treas. Dec. 145 (1960), allows for the return of merchandise that was erroneously shipped to a foreign country. Thus, the commenter suggested that merchandise erroneously shipped to a foreign country should be exempt from entry under HTSUS General Note 13(e)—since these types of shipments were not intended to be exported—and that § 141.4(c) should so provide.

Customs Response: Customs does not agree with this suggestion. Two separate concepts are apparently being confused here: Goods erroneously shipped that may be administratively treated as nonexports/nonimports, and goods undeliverable abroad that, pursuant to statute, are required to be exported to be exempt from entry. As stated by the commenter, § 141.4(c) provides for the entry exemption statutorily available under General Note 13(e), which was amended by section 681 of the Act to provide, in part, that goods undeliverable abroad must have been exported in the first instance. Exportation is defined at § 101.1(k) of the Customs Regulations (19 CFR 101.1(k)) in terms of intent to unite goods to the mass of things belonging to some foreign country. Thus, an intent to export domestic goods to some foreign country must be present before the entry exemption available can be considered applicable. Under the provisions of T.D. 55091(4), however, merchandise that was erroneously shipped is administratively treated as if it was never exported, because there was no intent to export the goods, *i.e.,* to unite the goods to the mass of things belonging to a foreign country, in the first instance. While this may seem like a case of semantics, the concepts embrace different scenarios: The latter situation addressed in the T.D. is much narrower than the circumstances required to be met by the entry exemption available under General Note 13(e). To the extent that the commenter believes that the T.D. may be inconsistent with the provisions of § 141.4(c), it is encouraged to write in, under the provisions of part 177 of the Customs Regulations, for a clarification of the T.D., but Customs does not see any apparent contradiction between these two exemption provisions. Accordingly, no change to the amendments is made based on this comment.

Comment: A commenter stated that Customs should clarify that the merchandise involved cannot leave the custody of *either* the carrier *or* the foreign Customs service.

Customs Response: It seems obvious that the statutory requirement does not require the merchandise to be in the custody of *both* the carrier *and* the foreign Customs service.

Comment: A commenter argued that the Interim Regulations are inconsistent with an agreement reached between Customs and a railroad association, which provides that the importer (required to make the certification regarding age of the car under HTSUS subheading 9905.86.05 or the certification regarding the exportation within 1 year from the date of importation under HTSUS subheading 9905.86.10) should not have to make the certification; the requirement should be met by a certified list from the Association, with information regarding the cars.

Customs Response: In general, Customs must have a mechanism in place to ''ensure'' that rail cars and locomotives entering the U.S. are not subject to duties or taxes. The current interim regulation gives U.S. Customs the authority to establish evidentiary requirements.

With regard to bonding requirements, Customs is unaware of any other method to insure the performance of the obligations set forth in the regulations (other than a bond). Since there is a statutory requirement, compliance with which is guaranteed by a bond, and since the legislative history specifically authorized the requiring of such a bond (see the **BACKGROUND** to the Interim Regulations, under Other Exemptions from Entry), we see no alternative to requiring such a bond.

However, the commenter requested Customs to accept the railroad association's certification of eligibility for importation under HTSUS subheading 9905.86.05 instead of having the certification of particular railroads actually importing the cars; that the association should guarantee the accuracy of that certification and the fact that any car so imported would be timely exported. If the railroad association would be willing to post a bond that made it, rather than the actual importing railroad, responsible for any default of those two commitments and the association would further agree not to raise as a defense to an action the fact that it was not the importing railroad, then Customs would draft the appropriate bond language and seek to obtain the formal commitment of the Department of the Treasury that the Customs Service may accept such a bond from the association for the activity specified. Accordingly, no change to the regulations is made at this time.

Comment: Three comments—all from express companies—suggested that Customs should clarify that requiring documents under § 141.4(c)(2) to support claims for exemption from entry for undeliverable articles should not be done on a routine basis.

Customs Response: We disagree with this proposal. The express companies deal primarily with small, low-value shipments. HTSUS General Note 13(e), however, applies to all shipments. There are no restrictions upon mode of transport, value, country of origin, quota merchandise, or other agency requirements. Customs could conceivably receive claims for importation without entry on shipments of unlimited quantities or value. We oppose inclusion of any language which could be interpreted as limiting Customs authority to require supporting documentation. Accordingly, no change to the amendments is made based on this comment.

Comment: Four commenters contended that the documentation needed to enter a shipment valued at $200 or less, provided for in § 143.23(j), which does not include ''shipping weight,'' should be consistent with the documentation required to be on manifests submitted by express carriers under § 128.21(a)(6), which does include ''shipping weight.''

Customs Response: We agree with this proposal. Because the weight of a shipment can provide valuable enforcement or compliance information, we feel that ''Weight'' should be included in the list of required information under § 143.23.

Comment: Four commenters proposed either to eliminate language from § 143.23(j) which refers to informal entries for shipments valued at less than $200, or provide statements which essentially assert that an entry is not required for these shipments.

Customs Response: Customs disagrees with the underlying premise of these commenters, *i.e.,* that such low-value shipments are exempt from entry requirements. As stated in the **BACKGROUND** portion of T.D. 94–51, the interim regulations amended Part 143 *to clarify* the procedures for entries of shipments, including shipments which may be entered under the procedures provided for by regulation. Only merchandise specifically exempt from entry, *i.e.,* so-called intangibles, under General Note 13, is exempt from all forms of entry. By adding paragraph (j) to § 143.23, Customs was clarifying the entry requirements that have always been applicable to low-value shipments. Thus, this amendment to § 143.23 did not constitute a change from current practice.

Regarding the propriety of promulgating such regulations, the commenter is advised to see the Court's decision in *National Customs Brokers,* which, in responding to the issue of whether merchandise authorized to be exempt, under section 321 of the Tariff Act of 1930, must be entered, reiterated that the Secretary is empowered to promulgate regulations with respect to entry of low-value exempt merchandise pursuant to 19 U.S.C. 1498(b) (also citing 19 U.S.C. 1484). Accordingly, no change to the amendments is made based on this comment.

Comment: One commenter stated that, operationally, a hard copy air waybill must be submitted, even though the required information can be submitted through AMS.

Customs Response: Customs notes that the reference to ''manifest'' in § 143.23 includes electronic manifests.

Comment: One commenter indicated that couriers do not have to tell Customs what imported goods actually are.

Customs Response: This is an incorrect statement. Sections 143.23 and 128.21(a) very clearly state that a specific description of the merchandise is required.

Comment: One commenter proposed that Customs should require the importer's identification number and the manufacturer's identification number for low-value shipments.

Customs Response: Customs disagrees with the proposal to require ID numbers. Customs believes that it can adequately fulfill its enforcement needs for low-value shipments based on the shipper and consignee information required in §§ 143.23 and 128.21(a). Accordingly, no change to the amendments is made based on this comment.

Comment: Another commenter stated that Customs would be unable to enforce embargoes because the courier does not have to furnish Customs and their computer with the country of origin.

Customs Response: Sections 143.23 and 128.21(a) clearly state that the country of origin of the merchandise is required information for release of merchandise under section 321 provisions.

Comment: A commenter suggested that §§ 143.26 and 145.31 be incorporated into part 128 of the CFR.

Customs Response: Customs disagrees with this proposal. Section 143.26 applies to all shipments which qualify for administrative exemptions, regardless of whether the shipment is express. Section 145.31 deals with shipments in the mail and is not applicable to express shipments. Accordingly, no change to these sections is made based on this comment.

Comment: One commenter suggested that §§ 143.26 and 145.31 should be revised to state that the consignee, other than the owner or purchaser, must show direct interest in, and a relationship to, an importation sufficient to meet basic custom entry requirements.

Customs Response: Customs disagrees with this suggestion. The suggestion is confusing in that a consignee, by its very nature, must have an interest in and a relationship to the importation. Accordingly, no change to these sections is made based on this comment.

Comment: Two commenters stated that mail importations are exempt from entry under § 145.31.

Customs Response: Customs believes that it is made clear in the revised § 10.151 that the provisions included in § 145.31 constitute an entry under informal entry procedures. Information needed for release of mail shipments under administrative exemptions is supplied in documentation accompanying the mail package. This accompanying documentation is the ''other document filed as the entry'' required by § 10.151.

Conclusion

As no material issues were raised in the comments that are not adequately addressed by existing regulations or by relevant judicial decisions, Customs has decided to finalize the amendments as proposed, with the minor editorial changes to §§ 128.24(e), 143.23, and 143.26 discussed above. Also, conforming amendments to §§ 10.151, Part 178, and the general authority citations to Parts 10, 101, 123, and 159 are made as follows: § 10.151 is revised to add oral declarations to the forms of evidence showing the fair retail value of imported merchandise; Part 178 is amended to indicate the OMB-assigned control numbers for the information collections contained at §§ 128.21, 128.23, 128.24, 141.4, and 143.23; at part 10, the reference to 19 U.S.C. 1202 is revised to add a parenthetical reference to General Note 20 of the Harmonized Tariff Schedule of the United States (HTSUS); at Part 101, the parenthetical HTSUS reference is revised to include a reference to General Note 20; at Part 123, section 1433 is added to the citations for title 19—it was inadvertently left out of the Interim Regulation text; and, at part 159, section 1504 is added to the citations for title 19—it also was inadvertently left out of the Interim Regulation text.

The Regulatory Flexibility Act, and Executive Order 12866

Based on the supplementary information set forth above and because the amendments contained in this document reflect existing statutory requirements or merely implement interpretations and policies that are already in effect under interim regulations, pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that the regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, the regulations are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. This document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Paperwork Reduction Act

The collections of information in these final regulations, contained in §§ 128.21, 128.23, 128.24, 141.4, and 143.23, were previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) under control numbers 1515–0069 (§§ 128.21, 128.23 and 128.24) and 1515–0065 (§§ 141.4 and 143.23). The estimated average annual burden associated with this collection is .24 hours per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229, or the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 10

Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Value content.

19 CFR Part 101

Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Shipments.

19 CFR Part 111

Administrative practice and procedure, Brokers, Customs duties and inspection, Imports, Licensing, Reporting and recordkeeping requirements.

19 CFR Part 123

Administrative practice and procedure, Canada, Customs duties and inspection, Imports, International traffic, Railroads, Reporting and recordkeeping requirements, Trade agreements (US-Canada Free Trade Agreement).

19 CFR Part 128

Customs duties and inspection, Entry, Express Consignments, Imports, Manifests.

19 CFR Part 141

Customs duties and inspection, Entry, Invoices, Powers of attorney, Reporting and recordkeeping requirements.

19 CFR Part 143

Automated broker interface, Customs duties and inspection, Electronic entry filing, Entry, Imports, Invoice requirements.

19 CFR Part 145

Customs duties and inspection, Imports, Mail, Postal service, Reporting and recordkeeping requirements.

19 CFR Part 148

Customs duties and inspection, Declarations, Reporting and recordkeeping requirements, Taxes, Trade agreements.

19 CFR Part 159

Computer technology, Customs duties and inspection, Entry, Imports, Value content.

19 CFR Part 178

Administrative practice and procedure, Exports, Imports, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons stated above, the interim rule amending Title 19, Chapter I, parts 10, 101, 111, 123, 128, 141, 143, 145, 148, 159, and 178 of the Customs Regulations (19 CFR parts 10, 101, 111, 123, 128, 141, 143, 145, 148, 159, and 178), which were published at 59 FR 30289–30296 on June 13, 1994 (T.D. 94–51), is adopted as a final rule with the following changes:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624;

* * * * *

§ 10.151 [Amended]

2. In § 10.151, the words '', an oral declaration,'' are added following the words ''as evidenced by the'' in the first sentence.

PART 101—GENERAL PROVISIONS

1. The authority citation for part 101 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for part 123 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1624;

* * * * *

PART 128—EXPRESS CONSIGNMENTS

1. The authority citation for part 128 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1484, 1498, 1551, 1555, 1556, 1565, 1624.

§ 128.24 [Amended]

2. In § 128.24, the second sentence in paragraph (e) is amended by adding the words ''on the manifest'' following the words ''Such shipments must be segregated''.

PART 143—SPECIAL ENTRY PROCEDURES

1. The authority for part 143 continues to read as follows:

Authority: 19 U.S.C. 66, 1481, 1484, 1498, 1624.

2. In § 143.23, paragraph (j)(5) is amended by removing the word ''and''; paragraph (j)(6) is redesignated paragraph (j)(7); and by adding a new paragraph (j)(6) to read as follows:

§ 143.23 Form of entry.

* * * * *

(j) * * *

(6) Shipping weight; and

* * * * *

§ 143.26 [Amended]

3. In § 143.26, paragraphs (a) and (b) are each amended by adding the words '', using reasonable care,'' after the words ''may be entered''.

PART 159—LIQUIDATION OF DUTIES

1. The authority citation for part 159 is revised to read as follows:

Authority: 19 U.S.C. 66, 1500, 1504, 1624. Subpart C also issued under 31 U.S.C. 5151. Additional authority and statutes interpreted or applied are cited in the text or following the sections affected.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by adding, in appropriate numerical order according to the section number under the column indicated, the following information to read as follows:

19 CFR section description		OMB control No.
*	* * *	*
§ 128.21	Specific description of merchandise.	1515–0069
§ 128.23	Requirement of submission of Customs-approved bar-coded entry numbers for ACS processing.	1515–0069
§ 128.24	Requirement for Invoice, Advance Manifest, or Immediate Delivery application form.	1515–0069
*	* * *	*
§ 141.4	Requirement to make entry unless specifically exempt.	1515–0065
§ 143.23	Requirement to file entry summary form.	1515–0065

Michael H. Lane,

Acting Commissioner of Customs.

Approved: March 20, 1995.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–9192 Filed 4–13–95; 8:45 am]

BILLING CODE 4820–02–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Chapter III and Part 423

RIN 0960–AE07

Service of Process

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: The Social Security Independence and Program Improvements Act of 1994 (SSIPIA), established the Social Security Administration (SSA) as an independent agency in the Executive Branch of the U.S. Government effective March 31, 1995. The Social Security Administration will continue to be responsible for the administration of the old-age, survivors, and disability insurance (OASDI) and the Supplemental Security Income (SSI) programs. The SSA is also required to continue to assist in the administration of the Medicare program, the Black Lung program, and the Coal Industry Retirees Health Benefits Act. Prior to March 31, 1995, SSA was an operating component of the Department of Health and Human Services (DHHS). These final rules generally adopt as SSA rules the same procedures and practices on service of legal process applicable to DHHS. These final rules also remove ''Department of Health and Human Services'' from the heading of Chapter III of title 20 of the Code of Federal Regulations.

EFFECTIVE DATE: April 14, 1995.

FOR FURTHER INFORMATION CONTACT: Harry J. Short, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–6243.

SUPPLEMENTARY INFORMATION:

Background

The rules at 45 CFR Part 4, entitled Service of Process, prescribe the procedures DHHS follows regarding service of legal process in lawsuits brought against the Department and its employees and in other process directed at the Department or its employees. These final rules adopt, with minor changes, the same procedures and practices set out in 45 CFR Part 4 that were applicable to SSA when it was a component of DHHS. All changes are technical, that is, changes in names, titles, addresses and legal citations. The changes in legal citations are due to changes to the Federal Rules of Civil Procedure (FRCP) effective December 1, 1993.

DHHS Policies Continued by SSA

These final rules contain SSA's method of service of legal process and reflect Rule 4 of the FRCP regarding service of process in civil litigation in Federal courts, including service on Federal agencies and officials. Rule (4)(i) specifies that service on a Federal agency or officer is to be made by sending a copy of the summons and complaint to the officer or agency by registered or certified mail.

These final rules also provide that service of a summons and complaint on SSA or on any SSA official sued in his or her official capacity may be made by mailing a copy to SSA's General Counsel. Such service will constitute service on SSA or the official, as required by Rule 4 of the FRCP. Process mailed directly to SSA's General Counsel will avoid the delays encountered when documents must be transferred from other offices.

The General Counsel will also accept service of subpoenas and other process served on the Commissioner or on SSA. These final rules specify certain employees in the Office of the General